

HOUSE BILL REPORT

SHB 2415

As Passed Legislature

Title: An act relating to compensating the victims of uninsured and underinsured motorists.

Brief Description: Compensating the victims of uninsured and underinsured motorists.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Ericks, Roach, Kirby, Morrell, Green, Nixon, McDonald, Hasegawa, Conway, Simpson, Ormsby and Schual-Berke; by request of Insurance Commissioner).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/10/06, 1/12/06 [DPS].

Floor Activity:

Passed House: 1/18/06, 96-0.

Senate Amended.

Passed Senate: 2/28/06, 48-0.

House Concurred.

Passed House: 3/4/06, 97-0.

Passed Legislature.

Brief Summary of Substitute Bill

- Defines "accident" as an occurrence that is unexpected and unintended from the viewpoint of the covered person.
- Requires insurers to provide coverage regardless of whether an incident was intentionally caused unless the insurer can demonstrate that the covered person intended to cause the damage.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Kirby, Chair; Ericks, Vice Chair; Roach, Ranking Minority Member; Tom, Assistant Ranking Minority Member; Newhouse, O'Brien, Santos, Serben, Simpson, Strow and Williams.

Staff: Jon Hedegard (786-7127).

Background:

Definition of underinsured motor vehicle.

An "underinsured motor vehicle" is defined as a vehicle in which the party legally responsible (by virtue of ownership, maintenance, or use) for the bodily injury or property damage has either no insurance coverage or insufficient coverage to cover the full amount of the damage costs to which the injured party is legally entitled.

Requirements for automobile policies.

Automobile insurance must include coverage for damages resulting from underinsured motor vehicles. An insurer must provide coverage for insureds who are legally entitled to recover damages for bodily injury, death, or property damage from owners or operators of underinsured motor vehicles, hit-and-run motor vehicles, and phantom vehicles. Existing statutes require the coverage to apply to "accidents."

"Accident" as applied in underinsured motorist coverage.

Washington case law has held that an "accident" is not viewed through the eyes of the insured in underinsured motorist coverage. It is not an accident for the purpose of coverage merely because the insured victim does not expect or intend the event that caused harm. Generally, an intentional act by a motorist that leads to an unexpected or unintended result is not covered.

Summary of Substitute Bill:

"Accident" is defined as an occurrence that is unexpected and unintended from the standpoint of the covered person. This definition of "accident" is to be used in the statute and in the section of policies providing uninsured motorist coverage. "Underinsured coverage" is defined as coverage for underinsured motor vehicles.

An insurer is required to provide underinsured coverage whether or not an incident was intentional unless the insurer can demonstrate that the covered person intended to cause the damage for which the covered person is seeking coverage. If the covered person was the intended victim of the tortfeasor, the incident must be reported to law enforcement and the covered person must cooperate with any related investigation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The bill addresses a problem that was in the news and has led to more electronic mails than any other issue since 2000. The insured was working as a delivery person when she was struck by a person that intended to use his car to ram a third person. The driver that intended a collision was uninsured. The insured suffered numerous injuries. The insurer denied the claim because the event was an intentional act. It may have been

intentional to the driver that caused the event but it was accidental to the insured. Applying the insurer's logic would nullify insurance coverage in many other situations. Examples of such situations are when someone is struck by a drunk driver or someone who ran a red light. Ultimately the insurer paid after considerable local and national media coverage.

The bill views "accident" from the perspective of the insured. The burden is shifted from the insured to the insurer. Some courts have muddied the waters; I want to clarify the law. I don't think this bill is an appropriate vehicle to fix all underinsured motorist issues but it can address this situation.

The insured was in a coma. Filing a police report was not possible. It might not be possible today. Laws exist today that address fraud. It is not necessary to add the requirement of filing a police report.

(With concerns) What occurred was egregious. Insurers have no quarrel with a bill that covers that type of situation. This is the first time insurers will be required to cover victims of intentional crimes. The bill does extend coverage and will have price impacts. However, in these types of situations, victims expect coverage and we should honor that expectation. We are concerned about a potential for fraud though. We would like to see the insured file a police report. This addresses the potential fraud issue. There will be considerable discussion about fraud prevention this session, a potential opening for fraud. Language could be drafted to accommodate an insured that is incapacitated. Insurers are asked to pay fraudulent claims and claims that are unrelated to coverage. Underinsured motorist coverage is intended to address harm caused by use of the vehicle. Insurers want to protect innocent insured but we want to make sure that the possibility of fraud is not increased. Underinsured motorist coverage is not like most insurance. Standard liability insurance protects others against an insured's possible harmful acts. Underinsured motorist coverage protects an insured if the other party is not insured or has inadequate insurance. Insurers want to protect innocent insured who are driving or using a car; insurers do not want to cover any crime whether or not a car is in use. In other parts of the insurance code, a police report is required to deter fraud. Cooperation with the insurer is required today but it is not the same as requiring a police report. The bill expands coverage to intentional acts. This is a major change in Washington law; it should include safeguards against fraud. Contributory fault is a negligence based concept. It would not bar a claim for an intentional act as is contemplated in the bill. A person, who is involved in the intentional event, should not benefit if they are a party to the crime. Deterring fraud does not undermine the purpose of the bill.

Testimony Against: None.

Persons Testifying: (In support) Karen Kohler, Washington State Trial Lawyers Association; and Mike Kriedler, Office of the Insurance Commissioner.

(With concerns) Mel Sorenson, Allstate, Property Casualty Insurers Association; Gary Strannigan, SAFECO; Cliff Webster, American Insurance Association; and Jean Leonard, State Farm Insurance.

Persons Signed In To Testify But Not Testifying: None.